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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,088	10/24/2003	Mark G. Fontenot	4012.13	8477
23308	7590	07/16/2007		
PETERS VERNY, L.L.P. 425 SHERMAN AVENUE SUITE 230 PALO ALTO, CA 94306			EXAMINER ROBERTS, LEZAH	
			ART UNIT	PAPER NUMBER
			1614	
			MAIL DATE	DELIVERY MODE
			07/16/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Office Action Summary</b></p>	<p>Application No.</p> <p align="center">10/693,088</p>	<p>Applicant(s)</p> <p align="center">FONTENOT, MARK G.</p>	
	<p>Examiner</p> <p align="center">Lezah W. Roberts</p>	<p>Art Unit</p> <p align="center">1614</p>	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 April 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18, 21 and 22 is/are rejected.
- 7) ☒ Claim(s) 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

This Office Action is in response to the Amendment filed April 5, 2007. All previous rejections have been withdrawn unless stated below.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### **Claim Objections**

Claim 14 is objected to because of the following informalities: the claims recite (e) in the fifth line. "(e)" should read "(d)" to correspond with (d) as cited in originally in claim 16. Appropriate correction is required.

## ***Claims***

### **Claim Rejections - 35 USC § 102 – Anticipation (Previous Rejection)**

1) Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Sagel et al. (US 2001/0053375). This rejection is maintained.

Applicant argues the compositions of the reference are combined and not kept separate until applied to the tooth as in the instant invention. The reference teaches away from the instant invention. This argument is not persuasive.

The claims recite a first composition with a means of applying the composition to the teeth. The claims do not disclose other separate compositions just a first composition, which may be a one-part composition. The reference discloses a

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composition on a strip, which is a means for applying the solution to the surface of the teeth. Therefore the reference encompasses the instant claims.

2) Claims 21-22 are rejected under 35 U.S.C. 102(b) as being anticipate by Ambuter et al. (US 5,997,764). This rejection is maintained.

Applicant argues there is not suggestion or teaching to keep the components of these reactive compositions separate until they are applied to the teeth. The reference teaches away from the instant invention. This argument is not persuasive.

The claims do not recite the limitation that the composition includes separate solutions. The claims read on a composition comprising hypochlorite and flavoring. Therefore there is no limitation in the claims to keep the two components separate.

**Claim Rejections - 35 USC § 103 – Obviousness (Previous Rejections)**

1) Claims 1-6 and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howes (US 2002/0098246). The rejection is maintained.

Applicant argues the reference does not teach or suggest whitening of teeth. It does not teach or suggest the importance of keeping the components separate before applying them to the teeth or that the components together work better than the components individually. Howes does not even reach the “obvious-to-try” standard and would instead lead one of skill in the art away from the present invention not toward it. The argument is not persuasive.

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Howes discloses two part compositions. The fact that the components are separated suggests the components need to be separated before use. In regards to intended use, the intended use of the compositions carries no weight in determining patentability because the compositions of the reference are substantially the same, comprising two separate solutions one comprising sodium hypochlorite and the other comprising hydrogen peroxide that may be used orally, as the compositions of the instant claims. Therefore the compositions of the reference may be used to whiten teeth since the compositions of the reference and the compositions of the instant claims are substantially the same.

2) Claims 1-4, 6 and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over van den Bosch (US 6,017,515). The rejection is maintained.

Applicant argues the reference does not teach or suggest the importance of keeping the reactive components separate until they are applied. It does not teach or suggest the importance of keeping the components separate before applying them to the teeth or that the components together work better than the components individually. Van den Bosch does not even reach the "obvious-to-try" standard and would instead lead one of skill in the art away from the present invention not toward it. The argument is not persuasive.

See Examiner's response above in the Obviousness section subsection 1.

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3) Claims 1-6, 14-17 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jung (US 2006/0060819).

Applicant argues the reference does not teach or suggest the importance of keeping the reactive components separate until they are applied. It does not teach or suggest the present invention. Jung does not even reach the "obvious-to-try" standard and would instead lead one of skill in the art away from the present invention not toward it. The argument is not persuasive.

The reference discloses the two compositions are separated before use. The peroxide is activated by the hypochlorite, therefore the hypochlorite is incorporated into a separate composition. The importance of keeping the two components separate is so that they won't react before use, this is the reason they are stored separately. Furthermore Applicant is claiming a composition and does not recite the importance of separating the compositions. The limitation is the components are two different solutions, which is encompassed by the reference. As for teaching away, the reference is not teaching away because it discloses a two component system where one component comprises a peroxide and the other component comprise hypochlorite, which encompasses the instant invention.

Claims 1-6, 14-18 and 21-22 are rejected.

Claims 7-13 and 19-20 are withdrawn.

No claims allowed.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lezah W. Roberts whose telephone number is 571-272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lezah Roberts  
Patent Examiner  
Art Unit 1614



Frederick Krass  
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